United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

858

BRIEF FOR APPELLEES

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,822

ABDULLAH M. NASIRIDDIN — Appellant,

v.

ATTORNEY GENERAL OF THE UNITED STATES, et al., — Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

C.A. No. 2780-66

DAVID G. BRESS,
United States Attorney.

FRANK Q. NEBEKER,
OSCAR ALTSHULER,
LEE A. FREEMAN, JR.,
Assistant United States Attorneys.

QUESTIONS PRESENTED

In the opinion of the appellees, the following questions are presented:

1) Having been expressly given generous credit by the trial court for his presentence confinement -- and having received much less than the maximum sentence prescribed for his crime -- does appellant have any basis to demand a further reduction of his sentence?

2) Even were the facts otherwise, could appellant claim credit for incarceration due to his failure to move for release on bail or the trial court's refusal to set bail in view of his alleged capital offense?

I N D E X

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BRIEF FOR APPELLEES

COUNTERSTATEMENT OF THE CASE

On February 5, 1964, law enforcement officers arrested appellant for the fatal shooting of a Negro male. The grand jury originally indicted him for first-degree murder on March 2, 1964; but this indictment was later dismissed on appellees' oral motion because it referred to appellant as Donald R. Gill (Cr. No. 157-64). On May 18, 1964, the grand jury again indicted appellant for first-degree murder under his newly assumed name, Abdullah Maula Nasiriddin (Cr. No. 420-64).[1/]

1/ In addition, both indictments charged appellant with assault with a dangerous weapon (24 D.C. Code § 502) and carrying a deadly weapon (24 D.C. Code § 3204).

Upon a subsequent defense motion, the trial court committed appellant to Saint Elizabeths Hospital on June 26, 1964, for a mental examination pursuant to 24 D.C. Code § 301(a). The hospital certified on September 16, 1964, that he was competent to stand trial and had not been suffering from a mental disease or defect at the time of the offense.

On March 23, 1965, the appellant pleaded guilty to manslaughter, a violation of 24 D.C. Code § 2405,[2] and received a four-to-twelve year sentence on April 30, 1965.

The record shows that neither appellant nor his retained counsel applied to the court for his release on bail pending trial and sentence.[3]

The appellant brought this declaratory judgment action to obtain credit against his term of imprisonment for the time that he spent in presentence custody, including the twelve months that he was held in jail without bail being set, as well as the three months that he underwent mental examination. The lower court granted appellees' alternative motion for dismissal or summary judgment. This appeal followed.

2/ At that time, the trial court informed appellant that manslaughter carried a maximum sentence of fifteen years.

3/ See affidavit in support of application to proceed without prepayment of costs filed on May 28, 1964.

SUMMARY OF ARGUMENT

The record reveals that the trial court "took into consideration" the months that appellant had been confined in jail and hospitalized, lopping four years off the sentence that it had planned to impose. Nonetheless, appellant asserts that this presentence custody should be deducted from his already truncated sentence. Besides ignoring the facts, appellant's claim lacks any substance as a matter of law.

Since appellant's sentence falls far short of the maximum prescribed by the offended statute, it must be conclusively presumed that the trial court gave him appropriate credit for presentence custody. Stapf v. United States, ___U.S. App. D.C. ___, 367 F.2d 326 (1966). Moreover, a prisoner sentenced prior to the effective date of the Bail Reform Act, such as appellant, may only claim credit for incarceration due to "want of bail set." In this instance, appellant did not move for release, and the trial court did not sua sponte admit him to bail. Hence, appellant was not entitled to the credit that he received for his twelve months in jail. By the same token, no credit accrued during the three-month mental examination that the hospital performed upon his request.

ARGUMENT

I. The record discloses that the trial judge credited appellant with the time spent in presentence custody.

(Tr. 10)

Upon hearing appellant's explanation for his offense, the trial court shortened its intended sentence to take account of his previous confinement. In this regard, the judge explained:

> I want to be very frank with you and say I came on the bench wanting to resolve this question about the plea first. That was my first consideration. When I found the plea was voluntarily entered and he admitted his guilt, and no question about that, it was my intention to impose the maximum sentence.
>
> What you have told me shakes me a bit in that regard. I am inclined to think I should take into consideration the time he has been in jail and, therefore, the sentence will be from four to twelve years. (Tr. 10.)

Thus, apart from the Stapf presumption, the sentence in fact reflects more than adequate credit for the period that he remained in custody. A mere reading of the record compels dismissal of this appeal as frivolous.

II. Since appellant received less than the maximum sentence attached to the offense for which he was convicted, it must be presumed that he received credit for his presentence custody.

Somewhat redundantly, the decision in Stapf v. United States, ___ U.S. App. D.C. ___, 367 F.2d 326, 330 (1966) vitiates appellant's contention that the length of his presentence custody should be deducted from the sentence imposed by the trial court. The Stapf opinion explicitly held:

> Whenever it is possible, as a matter of mechanical calculation, that credit could have been given, we will conclusively presume it was given. The problems and expenditure of resources which would be caused by allowing each prisoner to attempt to demonstrate that in his particular case credit was not given, we feel, outweigh any possible unfairness.

And a footnote at that point added:

> It is obvious, but we wish to note expressly, that our decision is not equivalent, either in intent or effect, to a retroactive application of the 1966 law, which extends an administrative credit to all sentences, even though substantially below the maximum term.

The rule enunciated in Stapf clearly governs this case. The appellant received only a four-to-twelve year sentence for an offense carrying a penalty of not more than fifteen years imprisonment (22 D.C. Code § 2405). The trial court thus gave him a sentence "substantially less than the maximum provided by Congress." Amato v. United States, 374 F.2d 36 (3d Cir. 1967). This precludes attack upon the sentence.

III. In any event, appellant could not claim credit for the time that he was detained in presentence custody without bail having been set.

(a). The former provisions of 18 U.S.C. § 3568 (1964) allow no credit to persons in appellant's situation.

The appellant's own failure to move for release on bail renders him ineligible to receive credit for his presentence confinement. As construed by Stapf v. United States, ___U.S. App. D.C. ___, 367 F.2d 326, 330 (1966), the relevant wording of 18 U.S.C. § 3568 (1964) extends credit solely to "thcse in custody for want of bail set." The appellant here remained in jail awaiting trial and sentence because the trial court did not admit him to bail. Having made no effort to secure his release, appellant obvicusly may not blame his incarceration on "want of bail set." Therefore, no credit arose for this period about which appellant now complains.

Even had appellant sought release, the fact that he had been charged with a capital offense, coupled with his criminal record, would likely have constrained the trial court to refuse to set bail. 4/ Indeed, appellant acknowledges that "he was ineligible for bail." And viewed as one incarcerated due to the outright denial of bail, appellant could not apply that time against

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4/ The recently added provisions of 18 U.S.C. § 3148 (1966), preserve the trial court's traditional discretion to decline to release persons charged with offenses punishable by death. See Federal Rules of Criminal Procedure 46(a)(1).

his sentence. Thus in Epperson v. Anderson, 117 U.S. App. D.C. 122, 326 F.2d 665 (1963), the prisoner got no credit for confinement between conviction and sentence that resulted from the trial court's revocation of bail. Likewise, under the existing law, a refusal to set bail in appellant's case would not have entitled him to credit for his consequent incarceration. Sawyer v. United States, 8th Cir. No. 18,825 (April 1967).

(b) The amended provisions of 18 U.S.C. § 3568 (1966) have no retroactive effect on appellant's sentence.

Whereas the statute hitherto provided for credit only in case of confinement due to "want of bail," it now specifies that a prisoner shall be given "credit toward service of his sentence for any days spent in custody in connection with the offense or acts for which sentence was imposed." The legislative history indicates that this language was adopted to eliminate the type of restriction on credit illustrated by this hypothetical discussion. 5/ But this new provision is not retroactive. Stapf v. United States, ___ U.S. App. D.C. ___, 367 F.2d 326 (1966). It therefore would be immaterial even if the trial judge had not adjusted appellant's sentence.

5/ See H.R. Rep. No. 1541, 89th Cong., 2d Sess. 5, 16 (1966); S. Rep. No. 750, 89th Cong., 1st Sess. 21-22 (1965).

IV. The appellant is not entitled to credit towards his sentence for the period spent under mental examination in the hospital.

Under defense motion the trial court ordered that appellant be mentally examined pursuant to 24 D.C. Code § 301(a). Needless to say, the trial court committed appellant to the hospital for a determination of his competence to stand trial and his sanity at the time of his crime--not for "want of bail." The appellant's hospitalization nowise depended upon his financial ability to post bond. Instead, it was necessary to facilitate the mental examination he desired. Accordingly, he cannot claim credit for that three months, just as he could not demand credit for incarceration that followed revocation of bail. Epperson v. Anderson, 117 U.S. App. D.C. 122, 326 F.2d 665 (1963).

CONCLUSION

WHEREFORE, it is respectfully submitted that the judgment of the District Court should be affirmed.

/s/ DAVID G. BRESS
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United States Attorney

/s/ FRANK Q. NEBEKER
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/s/ OSCAR ALTSHULER
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/s/ LEE A. FREEMAN, JR.
LEE A. FREEMAN, JR.
Assistant United States Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that service of the foregoing Mimeographed Brief has been made upon appellant by mailing a copy thereof to him, Abdullah M. Nasiriddin, #83505-L, U.S. Penitentiary, Leavenworth, Kansas, 66048 this 19th day of June, 1967.

/s/ LEE A. FREEMAN, JR.
LEE A. FREEMAN, JR.
Assistant United States Attorney